

1 KAMQoreS

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x  
4 UNITED STATES OF AMERICA

5 v.

6 15 CR 333 (LTS)  
7 Sentence8 ZIV ORENSTEIN  
910 Defendant  
11 -----x12 New York, N.Y.  
13 October 22, 2010  
14 9:00 a.m.15 Before:  
1617 HON. LAURA TAYLOR SWAIN  
18 District Judge

## 19 APPEARANCES

20 AUDREY STRAUSS  
21 Acting United States Attorney for the  
22 Southern District of New York23 EUN YOUNG CHOI  
24 Assistant United States Attorney25 ALAN S. FUTERFAS  
26 Attorney for Defendant  
27 -and-  
28 ELLEN RESNICK  
29 Attorney for Defendant

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1 (Case called)

2 THE COURT: Again, good morning.

3 Counsel, would you kindly state your appearances.

4 MS. CHOI: Good morning, your Honor.

5 Eun Young Choi on behalf of the government.

6 THE COURT: Good morning, Ms. Choi.

7 MR. FUTERFAS: Alan Futerfas for Mr. Orenstein.

8 Joined by my associate Ellen Resnick.

9 THE COURT: Good morning, Mr. Futerfas, Mr. Orenstein  
10 and Ms. Resnick. Please give me just a moment.

11 Greetings to any and all who are listening in on the  
12 telephone line. We are here today for sentencing. I have  
13 received and reviewed the presentence investigation report,  
14 which is dated April 29, 2020, including the recommendation and  
15 addendum, as well as the defendant's sentencing memorandum  
16 submitted October 8, 2020, which was accompanied by four  
17 letters of support from the defendant's friends and family  
18 members, and a letter submission from the government which was  
19 dated October 15, 2020, and a proposed consent order of  
20 forfeiture; in addition, a proposed order of judicial removal  
21 with supporting documentation comprising a concurrence of the  
22 Immigration and Customs Enforcement Agency, a police statement  
23 in support of judicial removal, and a notice of intent to  
24 request judicial removal and factual allegations in support of  
25 judicial removal.

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1                   The Court has granted the parties' applications for  
2 sealed filings of their sentencing submission for the reasons  
3 stated in an order that has also been filed under seal, and the  
4 Court has directed defense counsel to file on ECF the letters  
5 of support with redaction of the writer's contact information.

6                   Are there any other written submissions that the  
7 parties have intended me to consider in connection with the  
8 sentencing?

9                   MS. CHOI: No, your Honor.

10                  MR. FUTERFAS: Your Honor, just so the record is  
11 clear, we submitted a very brief response to the probation  
12 report dated June 16, 2020. The changes in this -- this was to  
13 the probation department. The changes in the report were  
14 almost all ministerial: Name misspellings, things like that.  
15 I don't know if your Honor has that or not, but I know that was  
16 submitted to probation. I don't know if it was submitted to  
17 the Court.

18                  THE COURT: No, I didn't receive a copy of a  
19 communication to probation, and I believe the most recent  
20 iteration of the presentence report is the April 29 one, at  
21 least the most recent one I've seen. And Ms. Choi is  
22 indicating that is the most recent one she's seen.

23                  Ms. Choi?

24                  MS. CHOI: Your Honor, if I recall the correspondence  
25 that Mr. Futerfas received back from probation, the officer

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1 indicated that the time has passed for amending the PSR, but to  
2 the extent that there are ministerial changes to the PSR, I  
3 presume if they are material in some way that we could do that  
4 if the letter is provided to the court --

5 MR. FUTERFAS: They're not material to your Honor's  
6 sentencing at all. There were some corrections to names and  
7 spellings and things like that. It was a short letter. It's  
8 not material to what we're discussing today.

9 THE COURT: Are these changes that you would want made  
10 in the final official version of the PSR?

11 MR. FUTERFAS: As I review it now again -- I reviewed  
12 it of course in preparation for today -- the answer is no. I  
13 don't think they are even material enough to make a difference  
14 in the final PSR.

15 THE COURT: Very well then. Thank you.

16 Ms. Choi, would you please make a statement regarding  
17 the government's victim identification and notification  
18 activities in connection with this proceeding.

19 MS. CHOI: Yes, your Honor, per the normal procedures  
20 of the office and with the Federal Bureau of Investigation and  
21 the United States Secret Service, there have been victim  
22 notifications with regard to this particular case and including  
23 the proceedings with regard to Mr. Orenstein.

24 THE COURT: Thank you. The indictment, the S3  
25 indictment, is currently sealed as is the clerk's docket minute

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1 reflecting the guilty plea. Is there any objection to those  
2 being unsealed now?

3 MS. CHOI: No, your Honor. I believe just for clarity  
4 of the record, the S3 superseding information --

5 THE COURT: Information, I'm sorry.

6 MS. CHOI: -- to which Mr. Orenstein pleaded guilty.  
7 The government has no objection to the unsealing of the  
8 information and the fact of the entry of the information in the  
9 plea.

10 THE COURT: Mr. Futerfas.

11 MR. FUTERFAS: Neither do we, your Honor. Thank you.

12 THE COURT: Very good.

13 And I direct you, counsel, to meet and confer and by  
14 November 4, 2020 submit a letter as to what else can be  
15 unsealed at this point and the justification for maintaining  
16 anything else that you don't want unsealed under seal.

17 MS. CHOI: Understood, your Honor.

18 THE COURT: Thank you.

19 Mr. Futerfas, have you read the entire presentence  
20 report and discussed it with Mr. Orenstein?

21 MR. FUTERFAS: Yes, we have, your Honor.

22 THE COURT: And, Mr. Orenstein, have you yourself  
23 reviewed the entire presentence report?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: And have you discussed it with your

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1 attorney?

2 THE DEFENDANT: Yes, I have.

3 THE COURT: Thank you. Mr. Orenstein, you can be  
4 seated.

5 Mr. Futerfas, you just indicated that the minor  
6 objections you had had are not ones that you need to press at  
7 this point. Do you have any other issues with respect to the  
8 content of the report that you wish to address?

9 MR. FUTERFAS: No, we do not, your Honor.

10 THE COURT: Thank you.

11 Ms. Choi, does the government have any objections or  
12 other issues with respect to the content of the report?

13 MS. CHOI: None, your Honor.

14 THE COURT: Is the government applying to have  
15 Mr. Orenstein credited with the third point for acceptance of  
16 responsibility?

17 MS. CHOI: Yes, your Honor.

18 THE COURT: That application is granted, and the third  
19 point is reflected in the computations in the presentence  
20 report.

21 Ms. Choi, what is the government's position as to  
22 restitution?

23 MS. CHOI: Your Honor, in this case we did -- despite  
24 the victim notification and in light of the specific charges to  
25 which Mr. Orenstein pleaded guilty, we don't have any

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1 restitution with regard to this defendant at this time that the  
2 government is seeking.

3 THE COURT: Now, is that because the government  
4 believes that there are not victims of this defendant's conduct  
5 or that you are taking the position under Section  
6 3663(a)(1)(B)(ii) that complication and prolongation of the  
7 sentencing process resulting from fashioning of an order of  
8 restitution would outweigh the need to provide restitution to  
9 victims such that the Court should not make a restitution  
10 order?

11 MS. CHOI: Your Honor, it's the latter of the two.

12 THE COURT: All right. Based on that representation,  
13 the Court will decline to order restitution in connection with  
14 this sentencing.

15 Ms. Choi, I will have a series of questions for you,  
16 just to warn you. In the presentence report the probation  
17 department used a loss amount of \$400 million. Is that to your  
18 knowledge calculated by reference to profits and amounts of  
19 money laundering as opposed to actual losses to victims  
20 associated with this defendant?

21 MS. CHOI: Yes, your Honor. I think to clarify, the  
22 vast majority of that sum constitutes an estimate as to the  
23 total volume of illegal online gambling that occurred that  
24 would implicate the United States-based players who are making  
25 illegal deposits and getting illegal credits from the online

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casinos that Mr. Orenstein helped operate, as well as illegal online payment processing. So it represents the sum of the transactions, but I think that is a different question than a victim's loss or a pecuniary loss that would be due to any of the individuals at hand.

THE COURT: Thank you.

Now, with respect to the proposed order of forfeiture, would you explain the basis for the computation of that sum and the provisions in that order?

MS. CHOI: Yes, your Honor. The forfeiture is obviously slightly different in light of *Honeycutt* and the like. The amount that is reflected in the forfeiture -- excuse me, I'm having a little difficult through the mask.

The amount that's represented in the forfeiture judgment represents the actual amount of money that Mr. Orenstein received over the course of his involvement in the organization. So, it is a sum of his salary, plus he was given a portion of the profits. A fraction of the profits is somewhat -- I guess one could interpret it as a bonus. And so we took spreadsheets that Mr. Orenstein had on his computer and his own estimates and explanations, and that's the amount that's reflected there.

THE COURT: Thank you.

Mr. Futerfas, have you and Mr. Orenstein reviewed and discussed the proposed consent preliminary order of forfeiture?

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1 MR. FUTERFAS: Yes, we have, your Honor.

2 THE COURT: And, Mr. Orenstein, do you understand the  
3 provisions of the consent preliminary order of forfeiture?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Mr. Futerfas, the defense has no  
6 objections to the form, content or entry of the proposed order.  
7 Is that correct?

8 MR. FUTERFAS: That is correct.

9 THE COURT: Mr. Orenstein, have you signed the order?

10 THE DEFENDANT: Yes, I have, your Honor.

11 THE COURT: And do you consent to it being entered  
12 against you with a money judgment and a provision that your  
13 bail is to be applied toward the money judgment?

14 THE DEFENDANT: Yes, I do, your Honor.

15 THE COURT: Mr. Futerfas, have you also signed the  
16 order?

17 MR. FUTERFAS: Yes, I did.

18 THE COURT: Thank you.

19 Ms. Choi, would you like to make a motion now?

20 MS. CHOI: Yes, your Honor. The government would move  
21 at this time for the defendant to be sentenced pursuant to  
22 Section 5K1.1 of the guidelines in light of his substantial  
23 assistance to the government.

24 THE COURT: Thank you.

25 I have reviewed the government and the defense

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1 submission, and on the basis of the information provided in  
2 those submissions, the Court finds that Mr. Orenstein has  
3 provided the requisite substantial assistance, and so the  
4 motion is granted.

5 I note that in light of the fact that I have granted  
6 this motion pursuant to Title 18 of the United States Code,  
7 Section 3553(e) and Section 5K1.1 of the Sentencing Guidelines,  
8 the Court is authorized to sentence the defendant without  
9 regard to the otherwise applicable mandatory minimum sentencing  
10 provision associated with one of the counts, and without regard  
11 to the normal range of advisory guidelines, I will depart  
12 downward from the guidelines and consider the factors set forth  
13 in Section 5K1.1(a)(1) through (5) in particular in fashioning  
14 a sentence.

15 Is there any immigration detainer in place here?

16 MS. CHOI: Your Honor, I am actually not sure if the  
17 immigration detainer that was lodged at the beginning of the  
18 proceedings is still in place. Obviously, we've been in touch  
19 with Immigration and Customs Enforcement. They're aware of  
20 these proceedings, and the judicial order of removal is  
21 obviously pursuant to their knowledge of the proceedings and  
22 his immigration status.

23 THE COURT: And so just to map the proposed judicial  
24 order of removal and supporting documents to the statutory  
25 provision on which it's predicated, which contemplates a

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1 stipulation to a judicial order of removal as part of a plea  
2 agreement and providing for removal as a stipulated special  
3 condition of supervision, are you presenting this as a  
4 supplemental agreement to a prior written plea agreement and  
5 asking that the removal be stipulated and ordered as an  
6 additional special condition of supervised release?

7 MS. CHOI: Yes, your Honor. I think that that  
8 would -- that's an accurate way of looking at it.

9 THE COURT: Mr. Futerfas, do you have any objection to  
10 construing the application in that context?

11 MR. FUTERFAS: No, we do not.

12 THE COURT: Have you and Mr. Orenstein discussed  
13 thoroughly the application and supporting materials and his  
14 obligation under this agreement or entry of a judicial order of  
15 removal?

16 MR. FUTERFAS: Yes, we have.

17 THE COURT: Mr. Orenstein, have you discussed the  
18 application and the documentation including the plea statement  
19 that you have signed?

20 THE DEFENDANT: Yes, I have, your Honor.

21 THE COURT: And have you had an opportunity to ask  
22 your lawyer all of the questions that you had about that?

23 THE DEFENDANT: Yes, I have, your Honor.

24 THE COURT: And do you understand the provisions of  
25 it?

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1                   THE DEFENDANT: Yes, I do, your Honor.

2                   THE COURT: And do you agree to my entering the order  
3 of removal?

4                   THE DEFENDANT: Yes, I do, your Honor.

5                   THE COURT: Thank you.

6                   Counsel, I will now hear from you on general  
7 sentencing issues.

8                   MR. FUTERFAS: Thank you, your Honor. And thank you  
9 in particular for permitting an in-person proceeding this  
10 morning.

11                  Given the five years that have gone by since  
12 Mr. Orenstein's arrest in Israel and all of the work that he  
13 has done -- we have done together with the government, we  
14 thought it important enough to ask your Honor for an in-person  
15 proceeding, and we appreciate your Honor granting that and  
16 permitting that.

17                  THE COURT: You are welcome. I'm glad the public  
18 health situation as of today permits it.

19                  MR. FUTERFAS: Yes, we all are. Thank you, your  
20 Honor.

21                  This has been a long and certainly interesting  
22 process. Through that process, I have been privileged to get  
23 to know both members of the government that I hadn't worked  
24 with before and also Mr. Orenstein and members of his family,  
25 and that has been, again, one of the benefits of this job is

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1 you meet people who are interesting and are fundamentally good  
2 people, and sometimes you're in a position to help them in  
3 their lives and also work with members of the government who  
4 are responsible and solid. So we are grateful for the entire  
5 situation, at least from our perspective.

6 Many times defense lawyers such as myself will get  
7 calls from people who are arrested abroad and people will say,  
8 well -- they will have all kinds of thoughts or theories. Many  
9 times and most often it is very disconnected from the reality  
10 of the American criminal justice system, which they often don't  
11 understand. In Mr. Orenstein's case, he is very -- I think as  
12 our papers kind of reflect, he's very smart. He's very  
13 diligent. He's very careful. Basically, his nature is that of  
14 an accountant, of a serious accountant who had military  
15 training. I think your Honor saw that in the paper, he had a  
16 very responsible position in the navy. And he wanted,  
17 obviously, counsel to come to Israel and discuss what this case  
18 was about and the means to address it and also to, I think,  
19 largely and significantly express his regret for having gotten  
20 involved in all of this in the first place.

21 So, back in 2015 -- and this is shortly -- I mean, the  
22 arrest in Israel was in July, and it wasn't but just a few  
23 months later that we met in Israel and the course of conduct  
24 and the course of discussions that are reflected in my  
25 memorandum began. And it was clear to me after meeting him and

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1 spending some time with him that Mr. Orenstein is fundamentally  
2 a very -- came from a very nice family, good education, serious  
3 military service and is a serious, thoughtful, good person who  
4 got off track and got involved in something bigger than I think  
5 he anticipated, but he got off track. He got involved in a  
6 situation and was looking immediately to make amends, looking  
7 immediately to do the right thing to resolve his matter in a  
8 way that made sense for him philosophically, made sense for him  
9 that would reflect in some measure of atonement and reflect  
10 basically the fundamental character of who he is.

11                   And it also became apparent to us that because of his  
12 kind of careful, deliberate and thoughtful nature, that he  
13 would be an ideal information -- an ideal person to provide  
14 information and to be of assistance, an ideal person to do  
15 that. And so those discussions began, and there are other --  
16 there's a lot of -- obviously a lot of detail was put in our  
17 memorandum about what happened thereafter. What I can say is  
18 that the -- what we were able to provide I think was an  
19 enormous breakthrough, just an enormous breakthrough on many,  
20 many levels in terms of something that was extremely complex.  
21 It would have been -- in our judgment, and this is my personal  
22 view sitting through all of those situations, that without this  
23 very significant breakthrough which basically laid out  
24 everything, it would have been almost impossible, I think, for  
25 certain investigations to go forward or it would have taken

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1 years and years for certain investigations to go forward,  
2 that -- you know, without that assistance. I don't want to go  
3 into too much detail in terms of what we've said.

4 THE COURT: I have read all of the submissions  
5 carefully.

6 MR. FUTERFAS: So, and I think also, your Honor, that  
7 he is primarily responsible -- not just responsible, but  
8 primarily responsible for the continuing investigations that  
9 are ongoing now and will continue, I would imagine, to go on  
10 for some time. And as your Honor might note if your Honor  
11 could turn to, for example, page 3 of the government's letter--

12 THE COURT: Yes.

13 MR. FUTERFAS: -- in the first full paragraph at the  
14 top of the page, the first full paragraph, there is a  
15 discussion of certain amounts of money.

16 THE COURT: Yes.

17 MR. FUTERFAS: And that, you know, those types of  
18 figures, that kind of information was derived absolutely from  
19 the work that he did early on, backed up, completely backed up  
20 by massive amounts of information of all types. Without saying  
21 more than that, that's an indication of the kind of  
22 responsibility that he felt he owed to the government and owed  
23 to himself to just reflect who he is and to do the right thing,  
24 basically.

25 The other part of the letter, I think I would just

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1 draw your Honor's attention to, is on page 7.

2 THE COURT: Yes, I have page 7 in front of me.

3 MR. FUTERFAS: Thank you, your Honor. At the very  
4 bottom of the page, the very last sentence on that page --

5 THE COURT: Yes.

6 MR. FUTERFAS: -- that is -- I agree with that  
7 sentence entirely, but I would suggest, your Honor, that he is  
8 uniquely responsible for that sentence, uniquely responsible  
9 for the things stated in that sentence because this was just  
10 months after the arrest. There is no one else on the planet  
11 who could have provided this kind of assistance, and he did so,  
12 and he did so again thoughtfully and carefully and  
13 intelligently and very deliberately over and over and over  
14 again.

15 There was never a question, never in four years, never  
16 a question of honesty. For one second there was never a  
17 question of honesty. There was never a question of whether he  
18 knew something he wasn't saying or he didn't say something he  
19 should have said, nothing like that in the entire period of  
20 time that we were doing this. Never even happened. It's just  
21 basically that's his character, that's who he is. That's what  
22 he was going to do, and it is really enough. And I think the  
23 very next page on the top, the next page, page 8 --

24 THE COURT: Yes.

25 MR. FUTERFAS: -- where that basically says it all

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1 and over a period of years without a hiccup, not even for a  
2 second. That's just very, very rare in our business. It's  
3 very rare in our experience. This was just -- there was never  
4 a question ever because of the way -- of who he is and his  
5 background and how he came to this process. And so we as  
6 defense counsel, Ms. Resnick and I, we were fortunate because  
7 it made our jobs much easier, and it obviously lent itself to a  
8 very, very strong working relationship.

9 I know that there are law enforcement who wanted to be  
10 here today but who could not be because of various issues, but  
11 I would I say that if they could be here, a number of people  
12 would have been here who worked with Mr. Orenstein in the past  
13 four or five years and would have been here just to express  
14 their support.

15 Eventually, as your Honor recalls from the memo, there  
16 were numbers of meetings abroad. Thereafter, he waived  
17 extradition, came to this country, continued a whole series of  
18 meetings about different kinds of matters, was prepared to  
19 testify in any of these cases, any of the matters that might  
20 still be before the Court, and there is no question that I  
21 think people understood that because of just the docket and how  
22 things unfolded, that what his position was and people who knew  
23 him knew that he was honest and forthright and solid, and I  
24 think that made a huge difference in whatever ongoing matters  
25 might still be occurring.

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1                   So, I would say, your Honor, again, trying to be just  
2 a little bit discrete in my remarks, but I would say that  
3 Mr. Orenstein's efforts from the very beginning, and I mean  
4 from the very beginning, from day one, shows rehabilitation.  
5 It shows a very strong conscious decision to make amends, to  
6 atone for things that he did wrong, that he takes full  
7 responsibility for.

8                   He's been out on bail. Bail was granted, I think,  
9 about August 11, if I recall, or August 12, 2016. It's been  
10 four years and one or two months, four years and two months.  
11 Again, on bail for four years here. No incidents; no issues.  
12 Quite frankly, the only issues have been where we on the  
13 defense side have been harassing Ms. Choi to ask for a later  
14 curfew or something else or whatever just to give a little bit  
15 of relief to him during this period; but aside from our  
16 bothering her, there have been no issues with respect to  
17 Mr. Orenstein at all. Whatever conditions have been put in  
18 place over the last four years, four years and two months were  
19 abided by scrupulously. That's his nature; it's his character.  
20 And it obviously made our job so much easier in that regard.  
21 It's all part of the same package that I am met and Ms. Resnick  
22 and I had the opportunity to work with Mr. Orenstein during  
23 this whole time. It's all part and parcel of the same.

24                   So our request for with respect to what an appropriate  
25 sentence would be in this case, your Honor, is in our

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1 memorandum. He has served -- he did about -- served about 11  
2 months in Israel, served about a month or two here, I think  
3 about 13 months has served time, and he's been out on bail four  
4 years since then without any incident to the extent that I  
5 would just ask your Honor to consider all of that and consider  
6 given these circumstances that the sentence we are asking for  
7 in the memorandum your Honor seriously consider and impose.

8 THE COURT: Just to be clear, you're asking for a time  
9 served sentence.

10 MR. FUTERFAS: Yes, we are, your Honor. Thank you.  
11 There is an additional factor that wasn't in effect a year or  
12 two ago. Obviously, that's the current pandemic. I, my  
13 office, Ms. Resnick and I, we've represented people that have  
14 received sentences, and I'm sure your Honor is very, very well  
15 aware of this, different kind of sentences and after six  
16 months, eight months, a year, or 13 months, they've been  
17 released anyway because of the impact that the pandemic is  
18 having on various institutions. That's a factor that is  
19 present here that wasn't obviously present a year ago or two  
20 years ago or when he began his work with the government, but  
21 it's certainly a factor now.

22 But even putting that aside, this is -- I urge your  
23 Honor, and I think the government agrees, this is one of those  
24 cases where this is just what you really want to see: Someone  
25 with very deep knowledge and who is honest and trustworthy

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1 right off the bat, makes a decision which is of immense,  
2 absolutely consequential immense impact on the government's  
3 ability to further their various investigations, and that's  
4 what happened here.

5 Thank you, your Honor.

6 THE COURT: Thank you, Mr. Futerfas. My custom is to  
7 hear from both attorneys before turning to the defendant for  
8 remarks. So I will now turn to Ms. Choi.

9 MS. CHOI: Your Honor, I will be brief. I just wanted  
10 to mirror most of what Mr. Futerfas said with regard to this  
11 particular defendant, with highlighting a few small points  
12 simply because I know your Honor has read all of the  
13 submissions carefully, and so I don't want to take up any more  
14 of the Court's time.

15 I just wanted to emphasize that it is true that this  
16 particular defendant's cooperation was early and immediate. I  
17 think -- I've been doing this for some time now, and oftentimes  
18 for defendants that are charged with similar things that this  
19 defendant was, the decision to cooperate can sometimes take  
20 some period of time. Oftentimes you have to meet consistently  
21 and over some period with that defendant in order for that  
22 defendant to open up to his full culpability and the details  
23 surrounding what he did. That was not the case with  
24 Mr. Orenstein. It's a night-and-day situation. He was  
25 immediately open. We had no reason to believe that he was

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1 holding any information back with regard to the knowledge that  
2 he had.

3 Given that his role was that of an accountant, he  
4 supplied the detail-oriented skills that he acquired in his  
5 business dealings to the work that he performed at the request  
6 of the government and was very precise in all of his answers in  
7 a way that I think made him a very easy witness to learn from  
8 and to deal with. Had there been any situations in which he  
9 would have been called as a witness, I have no doubt that he  
10 would have made an excellent witness in light of the diligence  
11 which he applied himself to his work and providing substantial  
12 assistance to the government

13 One minor note, your Honor. I think you probably  
14 already picked up on this, as Mr. Futerfas said, on page 3,  
15 there are certain volumes that are reflected with regard to  
16 financial situations. I would just urge your Honor to compare  
17 those to the forfeiture amount which your Honor now understands  
18 the basis for. I think that is a fair reflection of his role  
19 within the scope of this larger organization. That's not to  
20 say he wasn't involved. Obviously, he was, and he did play a  
21 significant role, but I think if you compare those two figures,  
22 you can understand sort of comparatively the amount of -- his  
23 role in the hierarchy, as it were, and the amount of control he  
24 had over these items. I think he is properly viewed as someone  
25 who was a good soldier, a good deputy, but he was not some sort

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1 of mastermind to generate these numbers. And so I think that  
2 is a good -- a benchmark that your Honor may want to use in  
3 assessing where your Honor thinks an appropriate sentence is  
4 with regard to this particular defendant.

5 I don't know if your Honor has any other questions of  
6 the government; we're happy to answer them at this time

7 THE COURT: No, I have no specific questions. Thank  
8 you, Ms. Choi.

9 Mr. Orenstein, would you like to speak for yourself  
10 before I decide on your sentence?

11 THE DEFENDANT: Yes. Thank you, your Honor.

12 THE COURT: Thank you.

13 THE DEFENDANT: Thank you for letting me speak, your  
14 Honor. It is my fault that I am standing before you today. It  
15 is no one else's false. It is surely not Mr. --

16 MR. FUTERFAS: Go slowly for the court reporter.

17 THE COURT: While you're there, Mr. Futerfas, would  
18 you pull the base of the microphone closer to Mr. Orenstein.  
19 Mr. Futerfas, I try to discourage people from -- no, no. Move  
20 away. Move away. Trying to enforce social distancing here,  
21 that's why we have those little phones.

22 So, Mr. Orenstein, just speak out as if you expect me  
23 to hear you without the microphone. I tell people to pretend  
24 they're at the opera. You're the diva, so as long as you  
25 project like that, I'll be able to hear you fine, and go a

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1 little bit slower so that the court reporter can get everything  
2 down.

3 THE DEFENDANT: It is my fault. My mistake. I am  
4 here because of my own conduct. I grew up in a good home with  
5 amazing parents. I never thought in a million years that I  
6 would not lead a law-abiding life. I was taught excellent  
7 morals. For my military service in Israel, I volunteered to  
8 serve in the navy, but I was responsible for weapons operations  
9 and training. Later, I completed the very difficult CPA  
10 course of study and was on a steady path to live a law-abiding  
11 life. But at some point in my relationship with Gery Shalon I  
12 crossed the line and I continued to cross that line for several  
13 years while working for him. It was profitable. He paid me  
14 well. So I continued under the employment even though I knew  
15 his business was not lawful. I knew that the deals we made  
16 with banks around the world were not lawful or legal. And I  
17 knew that the processes and procedures we were using were not  
18 lawful or legal.

19 I am extremely remorseful for my conduct. Every  
20 single day, every moment since my arrest, during the period of  
21 my detention, and while I have been here in New York awaiting  
22 sentencing.

23 I apologize to the Court. I apologize to the  
24 government for all its work in prosecuting this case and, of  
25 course, I apologize to my family. I have not seen my children

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1 except a handful of times over the last five years for short  
2 stretches. I regret that my actions have denied my daughters  
3 the right to spend the past five years with their father. My  
4 actions denied them my help in their schoolwork, my  
5 encouragement and being there for all the special things we  
6 miss together, the holidays and birthdays. I take full and  
7 complete responsibility for all of this.

8 After the initial shock of my arrest and detention, I  
9 quickly realized that I needed to do the right thing, for my  
10 family, for my daughters, for the government, and for myself.  
11 I was fortunate to find a very good U.S. counsel who came to  
12 Israel to explain my options in the American criminal justice  
13 system. I saw an opportunity to make amends for my stupidity  
14 and poor judgment, and I immediately started on that path.

15 Because of my role in the businesses and my skills, I  
16 was able to provide enormous amounts of information and data  
17 about operations all around the world. This was the least I  
18 could do to in some small way begin to atone for my conduct. I  
19 have seen and mostly felt how my mistakes have hurt the people  
20 I love the most, and for that I will be forever sorry. I know  
21 that I can never cover my debt to this country and to my  
22 family. I can never repay the government for the opportunity  
23 to make amends for my conduct, and I personally thank Ms. Eun  
24 Young and the agents they allowed my in some small measure to  
25 atone and make amends for my conduct. What I can do, however,

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1 is promise I will never put anyone, this government or my  
2 family, in such a position again. Thank you.

3 THE COURT: Thank you, Mr. Orenstein. I'm very glad  
4 to hear your words.

5 Now I would ask everyone to sit with me quietly for a  
6 couple of minutes while I reflect on what I've heard while I  
7 make my decision, and then I will explain and announce it.

8 (Pause)

9 Thank you for your patience. I read very carefully  
10 everything that was submitted to me before today, and I have  
11 listened very carefully to everything that has been said here  
12 in court today. I adopt the factual recitation in the  
13 presentence report and the facts set forth in the sealed  
14 submissions.

15 This Court has discretion taking into account the  
16 applicable statutory provisions in exercising its power under  
17 Section 3553(a) of Title 18 to determine the particular  
18 sentence to be imposed in each particular case. Section  
19 3553(a) requires the Court to consider a number of specific  
20 factors and sentencing goals, as well as the provisions of the  
21 Sentencing Guidelines and requires the Court to impose a  
22 sentence that is sufficient but not greater than necessary to  
23 comply with the statutory sentencing purposes.

24 As to the Sentencing Guidelines, I conclude that the  
25 applicable guideline offense level is 43 and that the

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1 applicable Criminal History Category is I for the reasons that  
2 are detailed in the presentence report, and I adopt the  
3 grouping of charges analysis set forth in the presentence  
4 report. Accordingly, the advisory guideline range for a  
5 custodial sentence is life plus two years to run consecutively  
6 to the life sentence as required by statute for the Count Two  
7 aggravated identity theft conviction. I have used the  
8 November 1, 2018 edition of the guidelines manual in making  
9 these determinations.

10 As I previously noted, I am not bound by the statutory  
11 mandatory minimum sentencing provisions, and I will depart  
12 downward from the advisory guidelines in light of  
13 Mr. Orenstein's substantial assistance in the investigation and  
14 prosecution of other persons. I find based on the submissions  
15 that there is ample basis for a significant downward departure  
16 pursuant to Section 5K1.1 based on Mr. Orenstein's fairly  
17 extensive and very effective cooperation.

18 Ms. Choi, I thought you looked at me as if I were  
19 making a mistake at some point a minute ago?

20 MS. CHOI: No, your Honor. I just realized that in  
21 making my motion under 5K1.1, I didn't expressly reference 18  
22 U.S.C. 3553(e), and I just wanted to make sure I remembered to  
23 mark that for the record to the extent the government didn't  
24 expressly move on that statutory basis as well.

25 THE COURT: Thank you. I think in granting your

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1 motion, I did expressly reference 3553(e).

2 MS. CHOI: Thank you, your Honor.

3 THE COURT: So we're covered, all right.

4 So the Court has also considered carefully all of the  
5 statutory sentencing factors and goals that are relevant under  
6 Section 3553(a) and all of the information that has been put  
7 before the Court in light those factors and goals, and I will  
8 briefly address certain of the factors.

9 First, the nature and circumstances of the offense.

10 Mr. Orenstein and his co-defendants engaged in large-scale,  
11 extensive financial crimes. Mr. Orenstein's role was very,  
12 very significant, but, as the government has proffered,  
13 relatively limited to the roles of certain other  
14 co-conspirators in that Mr. Orenstein's background whose  
15 background was in accounting was involved in managing the  
16 finances of the illegal operations, including payment  
17 processing operations to disguise credit card payments that  
18 would otherwise have not been legal and would have been flagged  
19 by banks. His role in the scheme not only violated this  
20 country's laws regulating gambling and financial transactions  
21 but had the effect of undermining the integrity of the  
22 international credit card processing system, and so his  
23 criminal conduct was very serious indeed on the personal level  
24 and was part of a conspiracy that had enormous cash flow and  
25 financial impact. His activities also facilitated illegal

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1 activities that were primarily undertaken and directed by  
2 co-conspirators in terms of the various frauds and identity  
3 theft.

4 As to his personal history and characteristics, as  
5 Mr. Orenstein has acknowledged even in his remarks today, and  
6 as his counsel has acknowledged, Mr. Orenstein did not come to  
7 this activity out of any hardship or out of any lack of moral  
8 training in his household. He came from a good family and a  
9 background of education and public service, military service  
10 that prepared him to live a law-abiding, positive and  
11 successful life, which he did by all accounts up until his  
12 involvement with this conspiracy. He served with distinction  
13 in the Israeli Navy during his military service and  
14 successfully undertook and completed a very, very difficult and  
15 challenging course of study to be a certified public  
16 accountant. The letters that I have received from his family  
17 members and friends testify to his otherwise upstanding life  
18 and to his care for younger siblings when his parents  
19 separated, and his grandmother also speaks well of him and of  
20 her love for him.

21 When he was arrested, he does appear to have  
22 immediately turned his focus and his goals, and to have devoted  
23 himself not only to leading a new law-abiding life and  
24 cooperating with authorities, but he has also continued a prior  
25 pattern of helping others, which speaks well of his character

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1 overall. He is reported to have served while he was in custody  
2 in Israel in a position called a supporter to fellow inmates  
3 who were in need of help and also to have served as a tutor for  
4 other inmates. And in the United States I am informed in the  
5 letters he has engaged in quiet acts of charity and involvement  
6 with his religious community. His time in the United States  
7 has been without incident in terms of his compliance with  
8 supervision, and I am told that he spends long periods of time  
9 helping his daughters with their schoolwork at distance and  
10 providing care for members of his family who remain in Israel  
11 as well as for his partner here. And his remarks here in court  
12 bespeak deep remorse and a desire for atonement.

13 And so the Court has considered his conduct, both  
14 illegal and by way of cooperation and atonement and his  
15 personal attitude and orientation to his past conduct and his  
16 future goals in assessing whether a further custodial sentence  
17 is needed to address the sentencing considerations of  
18 punishment, deterrence and promotion of respect for the law.

19 The Court finds that Mr. Orenstein has shown great  
20 respect for the law and has undertaken to turn away from,  
21 reject, and burn any bridges that he had to the illegal aspects  
22 of his conduct since his arrest and consistently over the past  
23 five years, and so there is little, if any, need for a  
24 custodial sentence to promote those goals and the Court so  
25 finds.

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With respect to restitution, the Court finds in light of the government's representations that the complication and prolongation of the sentencing process that would result from the fashioning of an order of restitution outweighs the need to provide restitution to any victims of Mr. Orenstein's conduct, and the Court refers to Title 18 of the United States Code, Section 3663(a)(1)(B)(ii) as authorization for the Court to decline to impose an order of restitution here.

And the Court has also considered, as it must, avoiding unwarranted disparities in Section 5K1.1, and the conduct that satisfies the departure provisions of that element of the Sentencing Guidelines is the appropriate basis for disparities from sentences that might be imposed pursuant to the guidelines for facially similar criminal conduct and, of course, the Court sentences Mr. Orenstein, as it does each defendant, based on his own conduct and relevant factors.

And so the Court finds in consideration of Mr. Orenstein's early extensive and very effective assistance and his demonstration of self-rehabilitation and discipline since his arrest, the period of more than a year that he has spent in custody, and the lengthy period of time for which he has lived under supervision without incident that a -- the Court finds that a very substantial variance from the guideline range is necessary to fashion a sentence that is reasonable, appropriate, and no greater than necessary to address the

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1 statutory purposes of sentencing.

2 The Court concludes after considering 5K1 and the full  
3 range of Section 3553(a) factors that such a substantial  
4 downward departure is necessary. The Court also finds that  
5 Mr. Orenstein is required to forfeit \$1,837,043 representing  
6 the proceeds he obtained directly or indirectly as a result of  
7 his criminal activity as reflected in the proposed consent  
8 order of forfeiture.

9 I will now state the sentence that I intend to impose.  
10 Mr. Orenstein, would you and your counsel please stand socially  
11 distanced. Thank you.

12 Mr. Orenstein, it is the judgment of this Court that  
13 you are to be sentenced to time served on each of your eight  
14 counts of conviction to be followed by one year of supervised  
15 release on Count Two and three years of supervised release on  
16 Counts One and Three through Eight to run concurrently. The  
17 standard conditions of supervision 1 through 11 and 13 as  
18 detailed in the Sentencing Guidelines manual will apply. Those  
19 were written out specifically in the PSR. The probation  
20 department will explain them to you as appropriate, and I'm  
21 sure that Mr. Futerfas will have something to say to you about  
22 them as well.

23 In addition, you will be subject to the following  
24 mandatory conditions:

25 You must not commit another federal, state or local

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1 crime.

2 You must not illegally possess a controlled substance.

3 You must cooperate in the collection of DNA as  
4 directed by the probation officer.

5 I will suspend the mandatory drug testing condition  
6 based on the probation office's determination, which I am happy  
7 to adopt, that you pose a low risk of future substance abuse.

8 You must also meet the following special conditions:

9 You must submit your person, any property, residence, vehicle,  
10 papers, computer, other electronic communication, data storage  
11 devices, cloud storage or media, and effects to a search by any  
12 United States Probation Officer, and if needed, with the  
13 assistance of any law enforcement. This search is to be  
14 conducted when there is a reasonable suspicion concerning  
15 violation of a condition of supervision or unlawful conduct by  
16 you, the person being supervised. Failure to submit to a  
17 search may be grounds for revocation of supervised release, and  
18 you must warn any other occupants that the premise may be  
19 subject to search pursuant to this condition. Any search must  
20 be conducted at a reasonable time and in a reasonable manner.

21 You must provide the probation officer with access to  
22 any requested financial information. You must obey the  
23 immigration laws and comply with the directives of the  
24 immigration authorities. And if the probation officer  
25 determines based on your criminal record, personal history, or

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1 characteristics that you pose a risk to another person,  
2 including an organization, the probation officer, with the  
3 prior approval of this Court, may require you to notify the  
4 person about the risk, and you must comply with that  
5 instruction. The probation officer may contact the person and  
6 confirm that you have notified the person about the risk. And  
7 if you are in the United States, you will be supervised by your  
8 district of residence.

9 You must stipulate to the entry of a judicial order of  
10 removal from the United States pursuant to Section 238(c)(5) of  
11 the Immigration and Naturalization Act, which is Title 8 of the  
12 United States Code, section 1228(c)(5), and you must cooperate  
13 with the government and immigration authorities in connection  
14 with the enforcement of the order of judicial removal.

15 In light of your substantial forfeiture obligation and  
16 your finances, I will not impose a fine on you, but I will  
17 order that you pay to the United States the mandatory special  
18 assessment of \$800, which is \$100 for each of your counts of  
19 conviction, and that is payable immediately.

20 As I indicated before, and consistent with the consent  
21 order of forfeiture, I will order you to forfeit to the United  
22 States \$1,837,043 representing the proceeds of your criminal  
23 activity. This will be joint and several with any such  
24 obligation imposed on your co-defendant, Gery Shalon, and the  
25 \$50,000 United States currency bail that was posted will be

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1 credited against the forfeiture obligation.

2 I believe that this sentence is reasonable,  
3 sufficient, appropriate, and no greater than necessary to  
4 satisfy the statutory purposes of sentencing which include  
5 punishment and deterrence.

6 Does either counsel know of any legal reason why the  
7 sentence should not be imposed as stated?

8 MS. CHOI: Not from the government, your Honor.

9 MR. FUTERFAS: No, your Honor.

10 THE COURT: The sentence as stated is imposed.

11 I must say something important to you about appeal  
12 rights, Mr. Orenstein. To the extent you have not given up  
13 your right to appeal through your guilty plea, you have the  
14 right to appeal this sentence. If you are unable to pay the  
15 cost of an appeal, you may apply for leave to appeal  
16 in forma pauperis. At your request, the Clerk of Court will  
17 file a notice of appeal for you. Any notice of appeal must be  
18 filed within 14 days of the judgment of conviction, so make  
19 sure that you discuss this with Mr. Futerfas promptly.

20 Ms. Choi, are there remaining counts or underlying  
21 indictments that need to be addressed?

22 MS. CHOI: Yes, your Honor. The government moves at  
23 this time to dismiss all open counts on the original indictment  
24 and the S1 indictment, your Honor.

25 THE COURT: Was there a relevant S2?

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1 MS. CHOI: I do not believe for this defendant, your  
2 Honor. Any open counts, we'll just put any open counts, we  
3 request be dismissed.

4 THE COURT: Very well. Any open counts and  
5 indictments are dismissed.

6 So I would just like to say a few more words to you,  
7 Mr. Orenstein, and I thank you for listening.

8 It's clear that you devoted yourself extensively to a  
9 very serious criminal enterprise, but you have turned your back  
10 on that activity and in fact have been of great assistance to  
11 the authorities from early on in exploring, understanding, and  
12 prosecuting the range of activities and actors with which you  
13 were involved.

14 And so while you had made very poor choices in  
15 engaging in this activity, you have shown through your conduct  
16 that you wish to make good, lawful, and positive choices, and  
17 you have not just talked about that. You have carried through  
18 in important, tangible ways. And you are clearly a person who  
19 is capable of excelling and has excelled in everything that he  
20 has undertaken, and so I am confident that you will be able to  
21 keep the promise you made in open court today; that you will  
22 not go back to criminal conduct; and I urge you also to  
23 specifically promise yourself and the family that you love so,  
24 the children you miss so, that you will never again do anything  
25 that could even put you at risk of going back to prison. You

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1 understand how precious they are and how precious your life is  
2 and the honor in which you clearly wish to live, and your  
3 family are anxious to see you. Make sure that your life is  
4 always an encouragement to them, and that you are able to be  
5 present for them. And I wish you and your family continued  
6 strength.

7 To the extent you remain in the United States, you  
8 will have the supervision of the probation department and the  
9 support of the probation department. In further establishing  
10 your life, I have to caution you that you must comply strictly  
11 with all of the conditions set for the supervised release. If  
12 you are brought back before me for violating any of those  
13 conditions, I may sentence you to a term of imprisonment, so  
14 please don't put me ever to having to make a decision like  
15 that. I thank you for listening, and again, I wish you and  
16 your family courage, strength and safety.

17 I thank counsel for their dedicated work over several  
18 years on this case. I will direct that a copy of the  
19 presentence report be prepared for the Sentencing Commission.  
20 All other copies of the report must remain confidential. If an  
21 appeal is taken, counsel on appeal are to be permitted access  
22 to the report. The Court will sign and enter the proposed  
23 order of judicial removal and will also file the supporting  
24 papers for that order on the public docket, and the Court will  
25 also sign and enter the consent order of forfeiture filing that

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1 on the public docket, and I will expect Mr. Futerfas on  
2 Mr. Orenstein's behalf to contact probation and also work with  
3 the immigration authorities to make sure that both supervision  
4 and appropriate action on the removal order take place.

5 Counsel, is there anything further that we should take  
6 up together this morning?

7 MR. FUTERFAS: I don't believe so, your Honor. I know  
8 that at some point Mr. Orenstein is obviously making plans or  
9 will make plans to leave. I presume we contact probation. He  
10 has an ankle bracelet. I guess we contact them, and they will  
11 arrange for that procedure when he's ready to go or whatever  
12 the process is, we will work that through that office.

13 THE COURT: Yes. And you should contact them. There  
14 may need to be some transfer of the title of the ankle bracelet  
15 from pretrial to probation, but as long as you make contact  
16 with both of those departments, I'm sure that they will give  
17 you appropriate instruction.

18 And Ms. Ng will email to Mr. Futerfas a summary of the  
19 sentencing. Is that correct, Ms. Ng, or no or just send it to  
20 probation?

21 DEPUTY CLERK: No. We just -- we don't even inform  
22 probation any more because they're not using that system any  
23 more.

24 THE COURT: OK. Apparently, we have upgraded our  
25 software. So the things that are supposed to happen will

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1 happen, and again, I thank you all. I wish you all safety and  
2 good health.

3 Ms. Choi?

4 MS. CHOI: Your Honor, one other clarifying note along  
5 the same lines with regard to the bracelet, I believe  
6 Mr. Orenstein may need his passport in order to facilitate his  
7 purchase of a ticket to go back to Israel. I assume that will  
8 happen quickly, but he may need a separate endorsement from the  
9 Court because I believe that pretrial services has it, and I  
10 want to make clear for the record, the government has no  
11 objection for his access to his passport so he may go home.

12 THE COURT: So what I will need is a letter making  
13 that specific request and making clear that there is consent  
14 all around to that being released, and then I can endorse it,  
15 and it will be clear for everyone.

16 MS. CHOI: Great. Thank you, your Honor.

17 MR. FUTERFAS: Thank you for allowing us to appear in  
18 person, your Honor. Appreciate it very much.

19 THE COURT: It is good to see you all. And,  
20 Mr. Orenstein, I hope I never see you good. So good luck  
21 everyone. Thank you.

22 (Adjourned)